

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERADATA CORPORATION, TERADATA
US, INC., and TERADATA OPERATIONS,
INC.

Plaintiffs,

v.

SAP SE, SAP AMERICA, INC., and SAP
LABS, LLC,

Defendants.

MISC NO. 2:20-mc-0074 RSM

**DECLARATION OF KOSTIS
HATZITASKOS IN SUPPORT OF
TERADATA'S MOTION TO COMPEL
DISCOVERY FROM MICROSOFT**

I, Kostis Hatzitaskos, do hereby declare as follows:

1. I am a Vice President and co-head of the antitrust and competition practice at Cornerstone Research. I have been retained as an economic consultant by counsel for Teradata Corporation ("Teradata") in the above-captioned matter. I make this declaration based on personal knowledge. If called upon as a witness, I could and would testify competently to the matters set forth herein.

2. I have a Ph.D. in Economics from the University of California, Berkeley, and I have expertise in applied microeconomics. I have consulted from an economic perspective on a range of antitrust matters. I have coauthored multiple publications on economic methods in antitrust and competition matters, including chapters in reference books and handbooks published

DECLARATION OF KOSTIS HATZITASKOS IN SUPPORT
OF TERADATA'S MOTION TO COMPEL DISCOVERY
FROM MICROSOFT -1

MISC NO. ____

SUMMIT LAW GROUP, PLLC

315 FIFTH AVENUE SOUTH, SUITE 1000

SEATTLE, WASHINGTON 98104-2682

Telephone: (206) 676-7000

Fax: (206) 676-7001

1 by the ABA Section of Antitrust Law, and I am a member of the editorial board of the ABA's
2 *Antitrust Source*.

3 3. I have been asked by counsel for Teradata to opine on certain issues relevant to the
4 antitrust claims raised in the above-captioned case against SAP SE, SAP America, Inc., and SAP
5 Labs, LLC ("SAP").

6 4. As explained below, the information requested by Teradata's subpoena to third
7 party, Microsoft Corporation ("Microsoft") ("Requests") is highly relevant to economic analyses
8 of Teradata's claims and, in my experience, customary for non-party discovery in antitrust cases.
9 The information requested of Microsoft is needed for my colleagues and me to conduct economic
10 analysis of factors relevant to the underlying case. Standard economic analyses in antitrust cases
11 include the determination of relevant antitrust markets, the market power (if any) held by each
12 competitor in these markets, and the state of competition in the markets (including whether SAP
13 has substantial market power and the potential for injury to competition and Teradata from the
14 challenged SAP conduct).

15 5. Specifically, the Requests are relevant to Teradata's antitrust claims against SAP
16 for at least the reasons outlined below.

17 Request 1:

18 Request No. 1 seeks "Documents comprising or reflecting Your product roadmaps,
19 promotional materials, product development plans, and marketing plans for each of the ERP
20 Applications or EDAW Products and related services that You offer." I understand Teradata
21 has narrowed this request to exclude product roadmaps and development plans,
22 notwithstanding that such information is highly relevant and, in my experience, customary
23 in discovery in such cases. The requested promotional materials and marketing plans are
24 relevant to (among other issues) market definition and market power. They provide such
25 valuable information as the customers to which a firm, or group of firms, targets products;
26 the competitors the firm, or group of firms, sells against; how firms compete against each

1 other; and what features of product offerings are important to competition. This is relevant
 2 to an analysis of the extent and effect of SAP's market power, including any harm to
 3 competition and Teradata.

4 Request 2:

5 Request No. 2 seeks "Documents reflecting or concerning any assessment or
 6 evaluation of competition between or among Microsoft, Oracle, IBM, Teradata, and SAP
 7 for ERP Applications and/or EDAW Products and all data underlying or evaluated in such
 8 assessments or evaluations." This category of documents is also relevant to (among other
 9 issues) market definition and market power. These documents indicate the firms that
 10 Microsoft considers the primary competitors in both the ERP Applications market and the
 11 EDAW Products market, the strength (or weakness) of this competition, and the customers
 12 those competitors target. Again, this is relevant to an analysis of the extent and effect of
 13 SAP's market power, including any harm to competition and Teradata.

14 Request 3:

15 Request No. 3 seeks "Documents reflecting Microsoft's wins and losses of sales of
 16 ERP Applications and EDAW Products in competition with Oracle, IBM, Teradata, or
 17 SAP, including for each win and loss an identification of the product and supplier the
 18 customer switched away from and identification of the product and supplier it switched
 19 to." Win-loss records of customers indicate the primary products that
 20 customers targeted by competing firms consider substitutable for one another, which is
 21 relevant for determining market definition and assessing market power. A competitor's
 22 own analysis of the outcomes of efforts to compete for customers is relevant to
 23 understanding the factors that drive competition in the market and that influence
 24 customers' choices of competing products. In my experience, sophisticated firms such as
 25 Microsoft often track the requested win-loss data in electronic databases from which the
 26 data can readily be collected and produced.

Request 4:

Request No. 4 seeks “Documents sufficient to identify Your top 100 customers by revenue for each of the ERP- and EDAW-based products or services You offer, the specific Microsoft ERP- or EDAW-based products or services that each such customer purchases, the amounts paid annually by each such customer for each of those ERP- or EDAW-based products or services, and when each such customer began using and stopped using (for any that stopped) each of those ERP- or EDAW-based products or services.” Identities of customers of all major firms in a purported relevant market enable standard economic analyses such as calculating switching rates, diversion ratios, and market shares among particular sets of customers.¹ They also are helpful in determining which products customers find substitutable, and thus are relevant to defining relevant markets and assessing market power.

Although ideally we would obtain information about all Microsoft’s ERP and EDAW customers, I understand that this request is limited only to the top 100 customers to minimize any burden on Microsoft while still obtaining the requisite information about the most significant customers from a revenue standpoint. The amount paid by each customer is needed to determine the economic significance of each customer and the extent to which each customer purchases relevant products from each competing firm. For example, the 100th customer in Microsoft’s top 100 customers could be SAP’s biggest ERP customer by revenue, or it could be a relatively small customer for SAP. It also could be purchasing distinct ERP products with different features from Microsoft and SAP, which is why we need to know what specific products each customer is buying from Microsoft. Knowing when each customer started and stopped buying relevant products from Microsoft is

¹ Switching rates and diversion ratios are common metrics used in considering market definition and the degree of competition between different firms. *See, e.g., U.S. Dep’t of Justice & Fed. Trade Comm’n, Horizontal Merger Guidelines (2010).*

1 relevant to the analysis. A customer that started buying EDAW products from SAP only
 2 after ending its EDAW purchases with Microsoft indicates something quite different
 3 economically from a customer buying EDAW products from both SAP and Microsoft at
 4 the same time—and what the latter customer indicates economically, again, depends on
 5 what exactly it is buying from each firm and in what volumes. A customer that buys
 6 equally from both SAP and Microsoft indicates something different economically from one
 7 meeting virtually all its needs with SAP products while making only relatively small
 8 purchases from Microsoft. This type of comparative analysis of each firm’s customers is
 9 relevant for determining the degree to which customers consider certain products (across
 10 providers) substitutable, among other important economic considerations which ultimately
 11 inform market definition and market power assessments. This comparative analysis cannot
 12 be done without the requested data from Microsoft since it would omit analysis of a
 13 potential key competitor in each of the two relevant markets here.

14 Furthermore, the requested sales data is relevant to (among other issues) market
 15 definition, market power, and injury to competition. Data on transactional sales enable
 16 determination of market shares based on revenue, a common method of market share
 17 calculation. By examining revenue across potential key competitors in a relevant antitrust
 18 market, we can estimate the total market size in terms of revenue and calculate each such
 19 firm’s relative share of that market, which again is a standard economic approach for
 20 examining market power. Such analysis obviously cannot be done for those potential key
 21 competitors for which the requested revenue data is not available, and we have not to date
 22 found the requested revenue data for Microsoft from publicly available sources.

23 Request 5:

24 Request No. 5 seeks “Documents comprising or relating to any communication
 25 between Microsoft and SAP regarding HANA or S/4HANA, including but not limited to
 26 any changes to Microsoft’s or SAP’s business practices or the business relationship

1 between SAP and Microsoft relating to HANA or S/4HANA or restrictions on the ability
 2 of users of S/4HANA to transfer, export, or copy data derived, created, or processed by
 3 S/4HANA into a Named Product.”² I understand that Teradata has limited this request to
 4 communication between Microsoft and SAP regarding restrictions on the ability of users of
 5 S/4HANA to transfer, export, or copy data derived, created, or processed by S/4HANA
 6 into a Microsoft product. These restrictions imposed by SAP in recent years underlie
 7 Teradata’s claims regarding anticompetitive conduct it alleges SAP has engaged in to stifle
 8 competition and gain a dominant position in the EDAW Products market.

9 The narrow set of documents requested will provide important and needed
 10 information on the impact of SAP’s restrictions on Microsoft and its customers as well as
 11 their respective reactions to and assessments of those restrictions in the marketplace. The
 12 requested information will show how a potential key competitor is grappling with those
 13 restrictions. It is important to understand how Microsoft is discussing SAP’s conduct with
 14 SAP, such as complaints from Microsoft about SAP’s recently-adopted restrictions, as
 15 such discussions will provide key information on how SAP’s conduct is affecting
 16 competition in the relevant antitrust markets.

17 Request 7:

18 Request No. 7 seeks “Documents comprising or relating to any communication
 19 between Microsoft and SAP, any other competitor, any customer, or any government
 20 authority concerning any restrictions or prohibitions imposed by SAP on exporting,
 21 extracting, or transferring data derived, created, or processed by any SAP ERP
 22 Applications for use with an EDAW Product not offered by SAP.” This request
 23 complements Request No. 5 in that it includes communications regarding the same narrow
 24

25 ² A “Named Product” is defined “Microsoft SQL Server, Microsoft SQL Server Analysis Services,
 26 Microsoft Commerce Server, and any other or prior versions of these products.” These are Microsoft
 EDAW Products, with which SAP ERP Products may interact.

1 subject of SAP's recently-adopted licensing restrictions but goes beyond communications
 2 on that subject with just SAP. It includes such communications with other competitors,
 3 customers, and any government authority (e.g., as part of a government investigation into
 4 SAP's conduct). It is important to understand how Microsoft is discussing SAP's conduct
 5 with competitors, its customers, and regulators, as such discussions will provide key
 6 information on how SAP's conduct is affecting competition in the relevant antitrust
 7 markets.

8 Request 9:

9 Request No. 9 seeks "Documents sufficient to show the existence of any
 10 restrictions or prohibitions imposed by SAP on the ability of users of any SAP ERP
 11 Application to transfer, export, or extract data derived, created, or processed by such SAP
 12 ERP Applications for use or storage in a Named Product." This request focuses on SAP's
 13 restrictions on using Microsoft's EDAW Products in conjunction with SAP's ERP
 14 Applications. The requested documents are needed to identify and understand the specific
 15 restrictions SAP has imposed on Microsoft and its customers that are the subject of the
 16 communications requested in Request Nos. 5 and 7. Again, the requested information is
 17 relevant to how SAP's restrictions affect customer product choice and competition for
 18 those customers by depriving them of their historical freedom to choose certain
 19 combinations of ERP Applications and EDAW Products.

20 6. I have also been asked by counsel for Teradata to supervise research into publicly
 21 available information by my associates to determine the extent to which information sought by
 22 Teradata of Microsoft is available through public sources. My staff and I searched Microsoft's
 23 website, industry third-party sources, and news articles. Although public sources do include
 24 information relevant to economic analysis of Teradata's claims, the vast majority of the highly
 25 relevant information requested from Microsoft is not publicly available.
 26

1 7. We downloaded and reviewed Microsoft's annual reports (2010–2020) from
 2 Microsoft's investor webpage. We concluded that the annual reports' discussions of performance,
 3 competition, products, and other issues relevant to our analysis are very general and failed to
 4 disclose much of the highly relevant information sought by the Requests. For example, the reports
 5 do not break down revenues and costs by specific products or specific customers. Instead, they
 6 generally report revenue by operating segments, comingling ERP revenue, for example, with
 7 Office revenue, LinkedIn revenue, customer relationship management revenue, and revenue for
 8 other products. Other documents available on Microsoft's investor page and news releases also
 9 did not include the requested information.

10 8. To gather information from industry third-party sources, we used search engines to
 11 find information from industry participants, including customers of ERP and EDAW products,
 12 analysts covering ERP and EDAW products, Microsoft's competitors, and employees involved
 13 with ERP and EDAW products. We found that while these sources include information relevant
 14 to the economic analysis of Teradata's claims, they did not include the relevant information
 15 requested from Microsoft. For example, analyst reports did not provide information by specific
 16 products or customers. Abstracts of industry reports offered for sale indicate the reports did not
 17 include the requested information. For example, they do not appear report information by specific
 18 products and customers.

19 9. We also used search engines to find news stories related to competition between
 20 Microsoft and other ERP and EDAW vendors. News stories generally discussed competition
 21 without clearly identifying a particular set of customers or products, or without providing
 22 information on the choices of specific customers. A few news articles announced a new
 23 implementation of an ERP solution by a specific customer. However, these articles lacked
 24 relevant information requested from Microsoft, for example the identity of the incumbent vendor,
 25 revenues, or whether a prior implementation was discontinued.

1 10. Neither I nor any of my associates at Cornerstone Research assigned to the project
2 related to the above-captioned matter is a current, past, or anticipated employee of Teradata, SAP,
3 or any other ERP or EDAW competitor. I am not aware of any employee of Cornerstone Research
4 that is currently, was in the past, or is anticipated to become an employee of Teradata, SAP, or any
5 other ERP or EDAW competitor.

6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct.

8 Executed this 27th day of August, 2020, at Chicago, Illinois.

9
10 

11 _____
12 Kostis Hatzitaskos
13
14
15
16
17
18
19
20
21
22
23
24
25
26